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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/683,002	11/07/2001	Jozef Herman Peter Bastiaens	08CN07467-1	5002
23413	7590	02/09/2004	EXAMINER	
CANTOR COLBURN, LLP			LEE, RIP A	
55 GRIFFIN ROAD SOUTH			ART UNIT	
BLOOMFIELD, CT 06002			PAPER NUMBER	
			1713	
DATE MAILED: 02/09/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/683,002

Applicant(s)

BASTIAENS ET AL. 

Examiner

Rip A. Lee

Art Unit

1713

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1, 2, 5-13, 16-21 and 23-35.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: attachment to advisory action

Attachment to Advisory Action

This advisory action follows an after-final response filed on December 11, 2003. Applicants have amended claims 1, 7-13, 16, 18, 21, 24, 25, 26, 30, 31, 32, and 33. In particular, claims have been amended to recite exclusion of akylene-alkyl(meth)acrylate copolymer(s) as impact modifier. New claims 34 and 35 were added.

That the claims have been amended to exclude akylene-alkyl(meth)acrylate copolymer(s) constitutes new matter because such a limitation was does not appear in the specification as originally filed.[†] In fact, page 13 of the specification, paragraph [0039] allows for use of alkyl (meth)acrylates as impact modifiers. *Ex parte Graselli*, 231 USPQ 393 (BPAI 1983). Apart from violation of 35 U.S.C. 112, first paragraph, introduction of this matter would require further consideration and further search. Therefore, the proposed amendment will not be entered.


Applicants' declaration under 37 C.F.R. 1.131 has been considered, however, the claimed Exhibit was not received. Despite this, the invention of U.S. 2001/00318312 to Miyoshi *et al.* gains the benefit of the filing date of the pre-grant publication, which is February 14, 2001, rather than the publication date of October 18, 2001.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rip A. Lee whose telephone number is (571)272-1104. The examiner can be reached on Monday through Friday from 9:00 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu, can be reached at (571)272-1114. The fax phone number for the organization where this application or proceeding is assigned is (571)273-1104.

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January 11, 2004


DAVID W. WU
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700